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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,779	12/14/2001	Scott R. Swix	36968.265393 (BS01377)	9532

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EXAMINER	
VAN BRAMER, JOHN W	

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 10/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/020,779	SWIX ET AL.	
	Examiner	Art Unit	
	John Van Bramer	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8,9,11-15 and 17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,8,9,11-15 and 17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *31102*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 19, 2006 has been entered.

Response to Amendment

2. The amendment filed on July 17, 2006 cancelled no claims. Amendments were made to claims 1-6, 9, 11, 12, 14, and 17-20. No new claims were added. Thus, the currently pending claims addressed in this Office Action are 1-6, 8, 9, 11-15, and 17-20.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-10, 12-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Marsh et al. (U.S. Patent Number: 5,848,397).

Claim 1: Marsh discloses an advertisement management method, comprising:

a. Receiving programming content delivered as a scheduled lineup having an advertisement inserted into a future advertisement time slot. (Col 7, lines 40-52 and Col 7, line 65 through Col 8, line 23) (In reference to the showcase advertisements, the scheduled line-up would be the connection time and time during which the client system is actually communication with the system since programming content is being delivered during these times. The advertisements are schedule based upon a queue and displayed based upon viewing opportunities for each given time slot)

b. Categorizing the prescheduled advertisement as at least one of: an overrideable advertisement and a non-overrideable advertisement, wherein the overrideable advertisement is replaceable with another advertisement, and wherein the non-overrideable advertisement is not replaceable and will be delivered as scheduled. (Col 12, lines 7-64) (every advertisement in a queue is prescheduled)

c. Receiving an advertiser's request to replace the prescheduled advertisement with a different advertisement. (Col 8, line 47 through Col 9, line20; and Col 9, lines 65 through Col 10 line 20) (An advertisement request by an advertiser having higher priority advertisement will replace

the prescheduled advertisements with lower priority if it is capable of being overridden.)

d. Determining whether the prescheduled advertisement is categorized as overrideable. (Col 9, line 65 through Col 10, line 29 and Col 12, lines 7-64)

e. If the prescheduled advertisement is categorized as an overrideable advertisement, then replacing the prescheduled advertisement with the different advertisement. (Col 9, line 65 through Col 10, line 29 and Col 12, lines 7-64)

Claim 3: Marsh discloses the method of claim 1, wherein the overrideable advertisement is priced at a lower cost than the scheduled non-overrideable advertisement. (Wherein the first advertisement is a public service advertisement with a NO_PRIORITY status)(Col 8, lines 49-62 and Col 13, lines 8-39)

Claim 4: Marsh discloses the method of claim 1, wherein the request to replace the advertisement with the different advertisement is based upon data obtained using ratings system technology that tracks program viewing activities for the purpose of identifying most-valuable and least-valuable potential customers. (Col 15, line 31 through Col 16, line 12)

Claim 5: Marsh discloses the method of claim 1, further comprising broadcasting the scheduled programming content, including the different advertisement, to potential consumers. (Col 8, lines 47-62)

Claim 6: Marsh discloses the method of claim 5, wherein broadcasting the programming content comprises at least one of: broadcasting the programming content as a television broadcast, broadcasting the programming content as a radio broadcast, and broadcasting the programming content over a network. (Col 8, lines 47-62)

Claim 8: Marsh discloses the method of claim 1, wherein the request to replace the advertisement is based upon data obtained using marketing tools comprising at least one of: rating systems that track program viewing activities by sampling a plurality of households and estimating the number of viewers of the programs using viewing activity data, focus groups that study the effectiveness of different types of advertisements, and product sales reports. (Col 15, line 31 through Col 16, line 1)

Claim 9: Marsh discloses an advertisement management method, comprising:

a. Receiving programming content, delivered as a scheduled lineup having a first advertisement inserted into a future advertisement time slot. (Col 7, lines 40-52) (In reference to the showcase advertisements, the scheduled line-up would be the connection time and time during which the client

system is actually communication with the system since programming content is being delivered during these times. The advertisements are schedule based upon a queue and displayed based upon viewing opportunities for each given time slot)

b. Categorizing the first prescheduled advertisement as one of: an overrideable advertisement and a non-overrideable advertisement, wherein the overrideable advertisement is replaceable with another advertisement, and wherein the non-overrideable advertisement is not replaceable and will be delivered as scheduled. (Col 12, lines 7-64) (every advertisement in a queue is prescheduled)

c. Receiving an advertiser's request to replace the first prescheduled advertisement with a second advertisement. (Col 8, line 47 through Col 9, line20; and Col 9, lines 65 through Col 10 line 20) (An advertisement request by an advertiser having higher priority advertisement will replace the prescheduled advertisements with lower priority if it is capable of being overridden.)

d. Determining whether the first prescheduled advertisement is categorized as overrideable. (Col 9, line 65 through Col 10, line 29 and Col 12, lines 7-64)

e. If the first prescheduled advertisement is categorized as overrideable, then replacing the first prescheduled advertisement with the second

advertisement. (Col 9, line 65 through Col 10, line 29 and Col 12, lines 7-64)

Claim 12: Marsh discloses the method of claim 9, further comprising pricing an overridable advertisement at a lower cost than the scheduled non-overrideable advertisement. (Wherein the first advertisement is a public service advertisement with a NO_PRIORITY status) (Col 8, lines 49-62, and Col 13, lines 8-39)

Claim 13: Marsh discloses the method of claim 9, wherein receiving the request to replace the first advertisement with the second advertisement is based upon data obtained using ratings system technology that tracks program viewing activities for the purpose of identifying most-valuable and least-valuable potential customers. (Col 15, line 31 through Col 16, line 12)

Claim 14: Marsh discloses the method of claim 9, further comprising broadcasting the programming content including the second advertisement. (Col 8, lines 47-62)

Claim 15: Marsh discloses the method of claim 14, wherein broadcasting the scheduled programming content comprises at least one of: broadcasting the scheduled programming content as a television broadcast, broadcasting the scheduled programming content as a radio broadcast, and broadcasting the scheduled programming content over a network. (Col 8, lines 47-62)

Claim 17: Marsh discloses a system for managing advertisement programming, comprising:

a. A processor communicating with memory; wherein the processor receives programming content delivered as a schedule lineup having an advertisement inserted into a future advertisement time slot. (Col 7, lines 40-52) (In reference to the showcase advertisements, the scheduled line-up would be the connection time and time during which the client system is actually communication with the system since programming content is being delivered during these times. The advertisements are schedule based upon a queue and displayed based upon viewing opportunities for each given time slot)

b. The processor categorizes the prescheduled advertisements as at least one of an overrideable advertisement and a non-overrideable advertisement, wherein the overrideable advertisement is replaceable with another advertisement, and wherein the non-overrideable advertisement is not replaceable and will be delivered as scheduled. (Col 12, lines 7-64) (every advertisement in a queue is prescheduled)

c. The processor receives an advertiser's request to replace the prescheduled advertisement with a different advertisement. (Col 8, line 47 through Col 9, line20; and Col 9, lines 65 through Col 10 line 20) (An advertisement request by an advertiser having higher priority

advertisement will replace the prescheduled advertisements with lower priority if it is capable of being overridden.)

d. The processor determines whether the prescheduled advertisement is categorized as overrideable. (Col 9, line 65 through Col 10, line 29 and Col 12, lines 7-64)

e. If the prescheduled advertisement is categorized as an overrideable advertisement, then the processor replaces the prescheduled advertisement with the different advertisement. (Col 9, line 65 through Col 10, line 29 and Col 12, lines 7-64)

Claim 20: Marsh discloses the system of claim 17, wherein the processor broadcasts the scheduled programming content including the different advertisement. (Col 13, line 55 through Col 14, line 22)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 2, 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh et al (U.S. Patent Number: 5,848,397).

Claim 2: Marsh discloses the method of claim 1, wherein various advertisements are given a priority status (e.g., HIGH, MEDIUM, LOW, NO) wherein the NO priority assignment can be a public service advertisements which are typically cost free (Col 8, lines 49-62 and Col 13, lines 8-39). However, Marsh does not explicitly state that these priorities are based upon the cost of an advertisement. Marsh also discloses a mechanism for sorting the advertisements that fall within each assigned priority queue (Col 12, lines 7-64). The sorting criteria includes such factors as length of time the advertisement is to run and the number of exposures an advertisement is to receive. These criteria have historically been linked with the cost of and advertisement. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow an advertiser to pay a premium to replace the overrideable advertisement. One would have been motivated to set up a priority status based upon cost in order to allow the advertisement time slot provider the ability to maximize revenue for a given time slot based upon market demands.

Claim 11: Marsh discloses the method of claim 9, wherein various advertisements are given a priority status (e.g., HIGH, MEDIUM, LOW, NO) wherein the NO priority assignment can be a public service advertisements which are typically cost free (Col 8, lines 49-62 and Col 13, lines 8-39). However, Marsh does not explicitly state that these priorities are based upon the cost of an advertisement. Marsh also discloses a mechanism for sorting the advertisements that fall within

each assigned priority queue (Col 12, lines 7-64). The sorting criteria includes such factors as length of time the advertisement is to run and the number of exposures an advertisement is to receive. These criteria have historically been linked with the cost of and advertisement. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the advertiser to pay a premium to replace the overrideable advertisement. One would have been motivated to set up a priority status based upon cost in order to allow the advertisement time slot provider the ability to maximize revenue for a given time slot based upon market demands.

Claim 18 and 19: Marsh discloses the system of claim 17, wherein various advertisements are given a priority status (e.g., HIGH, MEDIUM, LOW, NO) wherein the NO priority assignment can be a public service advertisements which are typically cost free (Col 8, lines 49-62 and Col 13, lines 8-39). However, Marsh does not explicitly state that these priorities are based upon the cost of an advertisement. Marsh also discloses a mechanism for sorting the advertisements that fall within each assigned priority queue (Col 12, lines 7-64). The sorting criteria includes such factors as length of time the advertisement is to run and the number of exposures an advertisement is to receive. These criteria have historically been linked with the cost of and advertisement. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the advertiser to pay a premium for a to replace the overrideable advertisement. One would have been

motivated to set up a priority status based upon cost in order to allow the advertisement time slot provider the ability to maximize revenue for a given time slot based upon market demands.

Response to Arguments

7. Applicant's arguments filed July 17, 2006 have been fully considered but they are not persuasive.

a. The applicant's arguments were directed towards the amendments submitted by the applicant. The arguments have been addressed in the action above. Marsh does disclose, delivering a scheduled lineup having an advertisement inserted into a future advertisement time slot, and incorporate receiving an advertiser's request to replace the prescheduled advertisement with a different advertisement. Since, Marsh discloses all limitation of the dependent claims, the examiners reasoning and motivational statements used in the 35 U.S.C. 103 arguments do establish a prima facie case of obviousness and meet all criteria set forth regarding expectation of success. Additionally, the applicant has failed to argue any specific claim with regard to it containing a motivational statement for combining that would not result in success.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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